PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 40 ID#4325

ENERGY DIVISION **RESOLUTION G-3376**

MARCH 17, 2005

R E S O L U T I O N

Resolution G-3376. In compliance with Decision (D.) 04-09-022, Southern California Gas Company (SoCalGas), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) file open access tariffs to set forth nondiscriminatory terms and conditions under which a party may connect to and deliver natural gas into the utility systems. PG&E's proposal is approved as filed. SoCalGas' and SDG&E's proposals are approved with modifications. Implementation of SoCalGas' and SDG&E's tariffs shall be suspended until certain agreements are approved by the Commission.

By SoCalGas Advice Letter (AL) 3413, SDG&E AL 1474-G, and PG&E AL 2577-G, filed on October 4, 2004.

SUMMARY

PG&E, SoCalGas and SDG&E filed advice letters (ALs) with open access tariffs, establishing the terms and conditions under which parties may connect with and deliver natural gas into the utilities' systems. These ALs were filed to comply with Ordering Paragraph (O.P.) 6 of D. 04-09-022.

PG&E proposes that its new open access tariff be contained in a new section of its Rule 21. This resolution approves PG&E's tariff as filed, and it shall go into effect immediately.

SoCalGas and SDG&E propose to contain these tariffs in a new Rule 39, filed with SoCalGas' AL 3413 and in SDG&E's AL 1474-G. SoCalGas' and SDG&E's proposals are approved with modifications.

Some key elements of this resolution are summarized below:

- Implementation of SoCalGas' and SDG&E's tariffs shall be suspended until certain agreements are approved by the Commission.

- SoCalGas and SDG&E shall refile their tariffs within 15 days of the day of this order. When they refile these tariffs, in addition to making the changes ordered herein, SoCalGas and SDG&E shall file proposed standardized forms for all agreements referenced in Rule 39, except for the Interconnection and Operational Balancing Agreement (IOBA).
- Because elements of Paragraph A.5 of Rule 39 are more appropriately dealt with in an IOBA, and because some elements of Paragraph A.5 of Rule 39 are already handled in SoCalGas' and SDG&E's existing Rule 30, it is appropriate to delete Paragraph A.5 of Rule 39.
- D.04-09-022 clearly adopts a policy that presumes that providers of new sources of supplies will pay the actual system infrastructure costs associated with new interconnections. However, that decision allows utilities to file applications for rolled-in treatment. In any such applications for rolled-in ratemaking treatment, the utilities will need to clearly explain not only why a particular application for rolled-in ratemaking was made, but also why other potential applications were not made.
- Many parties raise reasonable objections to the inclusion of Gas Quality Standards – Section B in Rule 39. This section runs counter to the directive of D.04-09-022, which states that tariffed gas standards should not be changed, until this can be addressed in Phase 2 of R.04-01-025. By including gas standards for new supplies separately from their main location in the tariffs, (i.e. in Rule 30), they imply discriminatory gas quality standards.

BACKGROUND

These advice letters originate in Order Instituting Rulemaking (R.) 04-01-025, in which the Commission is seeking to establish policies and rules to ensure reliable, long-term supplies of natural gas to California. Phase 1 of that proceeding covered a host of issues, including liquefied natural gas (LNG) access, interstate pipeline access, capacity requirements, interstate pipeline contract renewal, and storage by third party providers. On September 10, 2004 the Commission issued its Phase 1 decision, D.04-09-022 (effective September 2, 2004), which dealt with many issues, and relegated some issues to other proceedings or to Phase 2 of the same proceeding. OP 6 of the decision reflects the Commission's desire to allow opportunities for all new sources of natural gas supply coming into the California system, including LNG, to be able to compete on an equal footing with all other sources of gas. OP 6 states:

> Within 30 days of this decision, PG&E, SoCalGas and SDG&E shall submit for Commission approval, non-discriminatory open access tariffs for all new sources of supply, including potential liquefied natural gas (LNG) supplies.

Consequently, all three utilities filed their proposed open access tariffs on October 4, 2004. SoCalGas in AL 3413 and SDG&E in AL 1474-G both propose a new Rule 39 for the open access tariffs. PG&E proposes to attach the open access tariffs to its pre-existing Rule 21.

NOTICE

Notice of SoCalGas AL 3413, SDG&E AL 1474-G,, and PG&E AL 2577-G was made by publication in the Commission's Daily Calendar. SoCalGas and SDG&E state that copies of the Advice Letters were mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

No protests were filed against PG&E AL 2577-G.

On October 25, 2004 SoCalGas' AL 3413 and SDG&E's AL 1474-G were protested timely by seven parties – BHP Billiton LNG, Coral Energy Resources L.P., Indicated Producers, Peru LNG, Sempra Energy LNG, Southern California Edison, and Southern California Generation Coalition. On November 10, 2004, it was protested untimely by one party – California Independent Petroleum Association.

On November 1, 2004 several parties filed responses to the protests -- SoCalGas and SDG&E, Gas Transmission Northwest Corporation, Sound Energy Solutions, and Kern River Gas Transmission Company and Questar Southern Trails Pipeline Company.

The following is a summary of the major issues raised in the protests.

BHP Billiton LNG (Billiton):

Billiton notes that O.P. 8 of D.04-09-022 ordered SoCalGas and SDG&E to file an application to request implementation of their transmission system integration

and firm rights proposal. Billiton believes that implementation of the open access tariff, the subject of O.P. 6, is closely interconnected with the subject of O.P. 8, and recommends that the two matters be considered in combination. Billiton argues that it may be unproductive to adopt tariffs now that may prove to be inconsistent with Commission action that is eventually taken in response to the utilities' filings in response to O.P. 8. Billiton asks that the Commission not act upon the open access tariff, which is the subject of this Resolution, until after the utilities file their proposals dealing with transmission system integration and firm rights, after interested parties have reviewed those proposals, and after the Commission has acted upon them. We should note that the utilities did file their transmission system integration and firm rights proposals on December 2, 2004 with Application (A.) 04-12-004.

Coral Energy Resources (Coral):

In its prologue, Coral reminds us that D.04-09-022 (the Decision):

- emphasizes that new gas supplies should enjoy nondiscriminatory access to the system (pp. 63, 64, and 76 of the Decision),
- provides that Phase 2 of the proceeding will establish a process to consider adoption of standardized operational balancing agreements for new upstream gas pipelines (Decision at p.96), and
- advocates coordinating with other state agencies on the matter of Gas Quality, and for this orders a technical workshop, and orders continuation of current gas standards until new agreements are reached (Decision at p.92, Finding of Fact No.59).

Referring to SoCalGas' and SDG&E's Proposed Rule 39, Coral complains about the proposed Term of access no.1 (paragraph A.1), which provides that new supplies "shall not jeopardize the integrity of, or interfere with, normal operation of the Utility's system and provision of service to its customers." Coral is concerned that this provision could be used by SoCalGas and SDG&E to provide preferential access to their systems. To meet this concern, Coral requests that the following statement be added: "…provided however, that all gas supplies, whether from new or existing sources, shall be allowed to compete on an equal footing."

Coral also contests the proposed Term of access no. 2 (paragraph A.2), which states that the Interconnector and the Utility must execute an Interconnection and Operational Balancing Agreement (IOBA). The proposed second sentence of

this paragraph specifies a number of features which will be included in the IOBA. Coral notes that D.04-09-022 made it clear that IOBA issues will be addressed in Phase 2 of R.04-01-025, and argues that the second sentence is premature and should be deleted.

Coral objects to the "conditional and tentative" nature of the proposed Term of access no. 4 (paragraph A.4), which states that the "point of interconnection *may* be established as a transportation scheduling point, pursuant to the provisions of Rule 30, if the Interconnector abides by the standards of the North American Energy Standards Board." (italics added) Coral also wants this paragraph to state that a customer need not amend its existing transportation agreement to take advantage of the new receipt point, with the only condition being that the interconnecting party abide by the standards of the North American Energy Standards Board.

Coral objects to the proposed Term of access no.5, which states that the Interconnector is responsible for delivering gas supply on a uniform hourly basis at the point of interconnection, and specifies certain pressure constraints. Coral submits that this provision prejudges the outcome of the development of the IOBA in Phase 2 of R.04-01-025. Coral maintains also that delivery conditions are already discussed in Rule 30 ("Transportation of Customer-Owned Gas", in Section B.2) and urges that separate tariff standards not be created in separate tariff provisions, and that all sources of gas supply be subject to the same tariff rules.

Coral next takes issue with Term of access no. 6, which discusses the maximum physical capacity of the interconnection, and limits the utility's take-away commitment. Coral's concern is that the language may be used to discriminate against new incoming supplies, and so Coral asks that language be added that ensures that all supplies are dealt with on an equal footing.

Coral expresses the same concern with Term of Access no. 7, which states that flows from the new supply source may be affected by other physical flows on the system, storage conditions, etc.

Coral also recommends that three paragraphs be added to the proposed Terms of Access section of the new Rule 39. First, Coral explains that OP 7.a of D.04-09-022 provides that Otay Mesa shall be a common receipt point for both SoCalGas

and SDG&E. Coral maintains that the same status should be accorded any new receipt point on the SDG&E system.

The second requested new paragraph states that "The utility shall provide an interconnection and capacity study at the request and expense of the requesting party, which may be an interconnecting pipeline or a supply source."

The third requested new paragraph has three parts. First, Coral wants the utility to be obligated to expand its receipt point capacity at the request and expense of a supply source or interconnecting pipeline. Second, Coral wants codified the idea that parties who pay for expansions also have scheduling priority. And third, Coral wants codified the Commission's ruling in D.04-09-022 that "…requests for rolled-in or any alternative ratemaking, can be filed through the application process, with appropriate notice to customers."

As do most commenters, Coral requests that the section of the proposed Rule 39 dealing with Gas Quality be excised on the grounds that it is both premature (the Gas Quality technical workshop ordered in D.04-09-022 has not yet taken place) and outside the scope of this compliance filing (the Gas Quality standards are addressed in Rule 30 and should continue to do so).

With respect to the proposed new Section C, on Interconnection Capacity Studies, Coral requests that a new provision be added stating that "each utility will negotiate and undertake any interconnection study on a non-discriminatory basis, recognizing that time is of the essence for such studies and agreements, and that parties will have to pay all actual and reasonable costs."

Indicated Producers (IP):

IP also expresses concern about language regarding the flow rate that is included in proposed Section A.5. IP states that this issue is typically dealt with via negotiation over the IOBAs, and that a broad brush approach is not feasible or appropriate. IP states that the Commission has in the past allowed special dispensations for in-state producing fields which may have special flow characteristics. In addition, the paragraph suggests the question of a penalty for noncompliance, which however is not addressed. IP asks that this section be stricken.

IP is concerned that the proposed Terms of Access are too detailed and will deleteriously constrain supply from California sources. IP notes that SoCalGas filed Application 04-08-018 in August of this year to address reasonable terms of access to its system by California producers. IP recommends that the Commission either qualify these tariffs to restrict their application only to non-California supply sources, or meet their concern by deleting Section A.5 and Section B.

IP is concerned that the proposed Rule 39 requires the interconnecting party to execute multiple mandatory agreements whose contents have not yet been negotiated or determined by the Commission.

Peru LNG:

Peru LNG objects to the Proposed Rule 39, stating that, in express violation of Commission directive in D.04-09-022, it has expanded the scope of existing Rule 30 quality standards to include the California Air Resources Board specifications for compressed natural gas. Peru LNG requests that Section B be deleted.

Sempra Energy LNG (SELNG):

SELNG acknowledges that the introductory paragraph of the proposed Rule 39 does express the Commission's intention that new supplies compete on an equal footing by stating that they be given "nondiscriminatory" open access to the system. SELNG is concerned, however, that specific clauses of the proposed Rule may be interpreted in such a way as to result in discrimination against new supplies. By way of example, SELNG cites Rule 39.A.1, Rule 39.A.6, and Rule 39.A.7. To assuage these concerns, SELNG recommends adding new language, either to the introductory paragraph of Rule 39, or as an added Term of access:

> "Nothing in this Rule shall be construed to provide to any other party physically interconnected with the Utility and/or delivering natural gas to the Utility system any preferences or superior right as against parties requesting and/or receiving service under this Rule, nor shall any provision in this Rule be construed to impose any disadvantage or inferior right upon a party requesting and/or receiving service under this Rule as against any other party physically interconnected with the Utility and/or delivering natural gas to the Utility system."

SELNG is also concerned about the Gas Quality Standards elaborated in Section B of the proposed Rule 39. First, its placement in this section suggests that gas subject to this tariff is under different quality standards from gas not subject to this tariff, a discriminatory standard. Second, the Commission has scheduled a technical workshop addressing gas quality standards, and so the placement here is premature. Third, the Commission has stated that until revised, the Utilities should continue to use existing gas quality standards. For these three reasons, according to SELNG, the section on Gas Quality standards (Section B.) should be stricken.

Southern California Edison Company (SCE):

SCE objects to the very use of the advice letter process to implement these open access tariffs mandated in OP 6 of D.04-09-022. SCE notes that the decision did not specify the means by which the utilities should comply, and advocates instead an application process. SCE criticizes the proposed tariffs for providing the Commission no factual basis to determine that the utility is failing to meet its obligation to provide nondiscriminatory service. SCE believes the utility must "demonstrate in its tariff its commitment that it will provide the service 'without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to transported, customer satisfaction, or undue discrimination of any kind.' 18 CFR §. 284.7(b)."

SCE maintains that the proposed tariff completely fails to describe the ways in which the utility's compliance can be measured. SCE believes that the Commission needs an evidentiary record before it to allow it to establish the benchmarks of utility compliance with the standard of nondiscrimination. SCE contrasts the tariffs filed here to the situation of a customer on an interstate pipeline who is able "to review the pipeline's latest description of the capacity and flows on its system that the pipeline has filed in its latest rate case or certificate application." The customer of the interstate pipeline can also, according to SCE, review the rates and terms of service of other customers, whose contracts are posted on the pipeline's website. SCE complains that all of this is completely missing with the current filing. SCE asks that these advice letters be rejected and that the utilities file applications to begin developing an evidentiary record to begin to address these problems.

Southern California Generation Coalition (SCGC):

SCGC filed substantially the same but separate protests for SDG&E's AL 1474-G and for SoCalGas' AL 3413. SCGC recommends that the advice letters be rejected without prejudice, and that the utilities be ordered to resubmit the proposed Rules 39 in applications along with the contracts that are referenced in Rule 39. SCGC argues that since these contracts must be reviewed and approved by the Commission as a precondition for implementation of open access, it makes sense to review all of them together. SCGC requests that this resolution modify OP no. 10 in D.04-09-022 dealing with the IOBA so that standardized operational balancing agreements are submitted for consideration in conjunction with the open access tariffs. SCGC argues that submission of a proposed IOBA should not be burdensome to SoCalGas, since the company already filed a draft IOBA as an attachment to its September 2, 2004 supplemental comments in Phase 1 of R.04-01-025. SoCalGas also filed a draft IOBA in Application (A.) 04-08-018. SCGC notes that the two submissions are similar, and has attached both to its protest. Likewise, SCGC argues that the Construction Agreement referenced in Section A.3 of the proposed Rule 39 should not be burdensome, since a Construction Agreement was proposed by SoCalGas in A.04-08-018. SCGC has attached the draft Construction Agreement to its protest.

SCGC disagrees with the premise of A.04-08-018, that California producers should receive treatment that differs from treatment that any other producers receive. SCGC points out inconsistencies between SoCalGas' filings in this AL 3413 and its A.04-08-018. The rules proposed in this AL apply to any new source of supply, while in A.04-08-018 SoCalGas is proposing an IOBA and a Construction Agreement that apply only to California producers. SCGC points out that SoCalGas' A.04-08-018 proposal contains a firm rights allocation scheme for Line 85 and the Coastal System. No such arrangement is developed in the AL 3413. SCGC has previously asked that A.04-08-018 be rejected without prejudice so that standardized regulations and forms could be developed in a single proceeding. And SCGC would like this Resolution to order the utility to instigate that proceeding by filing an application.

In the applications that it is requesting, SCGC also wants the utilities to include "a comprehensive system-wide flow diagram in schematic format showing flow paths and associated path capacity on the SDG&E [or SoCalGas] system." SCGC views this information as being useful and expeditious to a company planning to interconnect with SoCalGas' or SDG&E's systems, and so it believes the

availability of such a flow schematic is a prerequisite for requiring parties to bear the cost of specific interconnection capacity studies.

SCGC also recommends that the Commission require points of interconnection to be treated as transportation scheduling points if the interconnecting party signs an IOBA and agrees to abide by the standards of the North American Energy Standards Board (NAESB). The language proposed by SoCalGas says only that the utility may choose to give the interconnection this treatment.

Late-filed Protest by California Independent Petroleum Association (CIPA):

On November 10, 2004, CIPA filed its protest. CIPA asks that the proposed Rule 39 be modified so that it applies only to LNG supplies. CIPA justifies this request on Findings of Fact 35-37 of D.04-09-022, which stressed the need to develop open access policies in place to facilitate entry of LNG in the California gas grid. CIPA believes that it "is questionable" that the decision intended these open access tariffs to apply to non-LNG sources as well. In addition, CIPA also protests the inclusion of several other components which were not intended by the decision, namely, the California Air Resources Board (CARB) standards (in Section B.), the requirements for a "Capacity Study" and for a "Consulting Services Agreement", and the requirement that the interconnecting party pay for the costs of the capacity study.

Joint Response by SoCalGas and SDG&E:

The utilities state that protesters seek to improperly modify the decision. The utilities state that all seven terms of access (Section A.) are taken directly from D.04-09-022, that the decision also necessitates the inclusion of Section B. (Gas Quality), and that the process for developing capacity studies, set forth in Section C., is consistent with the directives of the decision. The utilities ask that all the protests be denied and that the proposed Rule 39 be approved.

The utilities justify the inclusion of Section B. (Gas Quality) by citing the decision's order that

> Until we decide whether the current gas quality specification should be changed, all gas supplies entering the respondents' gas systems must continue to meet the current applicable gas quality specification tariff. It is our belief that the applicable utility's gas specification tariff should be the

governing document regarding all of the gas quality specifications that the gas supplier must meet.

The utilities defend the language requiring the execution of an IOBA, noting that all interstate pipelines currently delivering gas into the SoCalGas system have executed IOBAs that specify the terms and conditions of access to the utility system, or else they have access via previous sales agreements. The utilities justify the particular technical requirement mentioned in the proposed tariff language as being simply reasonable and consistent with the IOBAs.

The utilities argue that any potential future differences between this proposed Rule 39 and the IOBA that might be adopted in the A.04-08-018 can be addressed later through tariff modifications.

The utilities argue that the Commission's intention in D.04-09-022 was obviously to implement the open access tariffs via advice letter, otherwise it would have said so, as it did, for example, for the issues of firm access rights and system integration.

The utilities argue that SCGC is mistaken in its insistence that the utilities must file IOBAs and other standardized agreements and forms. The utilities argue that standardized forms are only required for issues involving "rates, tolls, rentals, classifications, or service" (PUC Code Section 489(a)) and relating to "customers' services such as applications for service, regular bills for service" (G.O.96-A), and other matters relating to utility customers, as opposed to utility suppliers. The utilities note that the Commission has never required the utilities to file IOBAs with upstream interstate pipelines. The utilities conclude that, while they support standardization of standardized agreements and forms with suppliers, such as IOBAs and capacity study agreements, the regulations make no such requirement.

The utilities dispute as well SCGC's request that utilities file a system-wide flow diagram with their re-filed Rule 39, noting the vagueness of the request, questioning its prudence (with respect to securing concerns), and claiming its lack of regulatory justification.

Regarding Term of access no. 1 (Section A.1), the utilities respond to Coral's request that language be added stating that new supplies compete on an equal footing. The utilities maintain that this directive is already included in the

opening paragraph's directive that the utility "shall provide nondiscriminatory open access to its system," but have no objection to Coral's recommended addition.

Regarding Term of access no. 4 (Section A.4), the utilities acquiesce to Coral's request that the word "may" be replaced by the word "shall" to clarify that a new receipt point would be established as a scheduling point. The utilities object, however, to all other proposed modifications to this paragraph as being beyond the scope of D.04-09-022.

Regarding Coral's concerns that Terms of access nos. 4 and 6 may be interpreted in such as way as to lead to discriminatory treatment, the utilities argue that the concern is unmerited, in that the introductory paragraph stated that service would be provided on a nondiscriminatory basis.

Regarding Coral's proposal for the inclusion of the three new paragraphs, the utilities believe the first recommended paragraph is consistent with the decision, but that it may exceed the scope of the decision. The utilities point out, that on a practical basis, it is moot, since there is no other pipeline even considering connecting with SDG&E. Regarding the second recommended paragraph, the utilities view it as redundant and thus unnecessary.

Regarding the several issues addressed in Coral's third new proposed paragraph, the utilities view the scheduling priority claim as being well beyond the scope of the decision. The utilities do not object to Coral's requested language stating the utility will expand its receipt point capacity at the request and expense of the interconnecting party. The utilities believe that Coral's requested language regarding rolled-in ratemaking treatment is unnecessary and restrictive.

The utilities believe that SCE has fundamentally misunderstood the Commission's intent with respect to the filing of the open access tariffs. First, they contend that an application is clearly not what the Commission intended. Second, regarding SCE's contention that the proposed Rule 39 contains no basis for determining whether or not true open access is being provided, the utilities maintain that the mandate, contained in the opening paragraph, to provide nondiscriminatory service expresses the utility's commitment to the principle of equal access. The utilities believe "It is not necessary for an open access rule to contain all the rates, terms, and other aspects of service that a customer can

examine to determine whether it has suffered discrimination at the hands of the utility." The utilities believe that SCE's implied suggestion, that the utility be obligated to post a description of its capacity and flows, goes far beyond what the decision envisioned. The utilities believe that the posting of customer contracts would violate confidentiality concerns. The utilities maintain that this can be taken up by SCE in the proceeding addressing firm capacity rights.

Gas Transmission Northwest Corporation (GTN):

GTN is concerned about assertions and requests for determinations made by SELNG and Coral regarding access to SoCalGas' system. Both parties want to make sure that gas entering the system does so on an equal footing basis, and object to a provision which GTN considers prudent, namely, that any new "interconnection and physical flows shall not jeopardize the integrity of, or interfere with, normal operation of the Utility's system and provision of service to its customers." GTN considers that the changes proposed by Coral and SELNG could even give new sources an unfair advantage. GTN sites its own experience as an interstate pipeline and asserts the importance of maintaining operational integrity. GTN wants the tariff to encourage operational integrity and also to require the equality of all sources, both old and new.

Kern River Gas Transmission Company and Questar Southern Trails Pipeline Company (Kern and Questar):

Kern and Questar support the several parties who protested the inclusion of Section B, the Gas Quality standards, in Rule 39, for substantially the same reasons as raised by other parties. In addition, Kern and Questar maintain that the addition of these standards now in this tariff could have the effect of retarding the delivery of new gas supplies to California, the effect opposite to what was intended in this proceeding.

Kern and Questar note the protests regarding certain agreements which have not been standardized or approved by the Commission. Kern and Questar maintain that it is not necessary that these agreements be standardized, since for example many parties have negotiated IOBAs independently with the utilities. Kern and Questar request that, in the event that standardized agreement forms are approved, they be seen as flexible templates which form the basis for possible subsequent negotiation. Kern and Questar point out that they in turn need to be

able to meet the contractual demands of their upstream suppliers, so contractual flexibility is a key requirement.

Kern and Questar do not object to the language addition recommended by SELNG to ensure true equal access, but suggest a modification to render it more completely neutral, favoring neither new supplies nor existing supplies.

Kern and Questar agree with other protestants who call for removal of tariff language regarding uniform hourly flows.

Kern and Questar agree with SCGC that provision by the utilities to potential interconnecting parties of a system flow diagram would be beneficial to all potential users of the SoCalGas system. Kern and Questar maintain that this information could expedite and simplify planning for potential new interconnections, and that there is no reason for SoCalGas not to provide this information, which could offer the information directly rather that posting it in a tariff. Kern and Questar argue that interstate pipelines are already required to provide such flow diagrams to shippers in advance of seeking FERC authorization for pipeline expansion.

Sound Energy Systems (SES):

SES raises concerns similar to those of Kern and Questar. SES opposes inclusion of Section B on Gas Quality. SES wants to ensure that whatever standardized agreements the Commission approves will serve as the basis for subsequent negotiation of the final agreements, i.e., that they be flexible rather than fixed. SES supports the addition of language to ensure nondiscrimination, while recommending the addition of even greater neutrality. SES opposes the proposed tariff language regarding uniform flow requirements. Finally, SES asks that the utilities be required to make available system flow diagrams.

DISSCUSSION

PG&E Advice Letter 2577-G

There were no protests to PG&E AL 2577-G. This could be because there is relatively less interest in interconnecting to the PG&E system at this time. We have reviewed that AL, and believe it reasonably sets forth a proposal for nondiscriminatory open access tariffs.

The Commission has reviewed the SoCalGas and SDG&E advice letters and parties' protests and reaches the following conclusions.

CIPA's Filing:

CIPA's filing was more than two weeks late and so will not be considered. In any event, CIPA's request that the open access tariff be modified to apply only to LNG is clearly against the intention of D.04-09-022. CIPA's concerns about the inclusion of the CARB standards in the Gas Quality – Section B, and regarding the reference to contract forms that have not been approved by the Commission, have been expressed by other parties, and are addressed here. Finally, we do not share CIPA's opinion that interconnecting parties should not have to pay for interconnection capacity studies.

Timing of Implementation of Open Access Tariffs:

Billiton has expressed a concern about potential interconnections between OPs 6 and 8 in D.04-09-022, i.e., between the open access tariffs and the scope of the proceeding considering the SoCalGas/SDG&E transmission system integration and the firm rights proposal. For this reason, Billiton has requested that the Commission suspend these tariffs until such a time as the Commission has acted upon the matters related to OP 8. In fact, SoCalGas has already filed its Application (A.) 04-12-004 complying with OP 8 and that proceeding is under way. We choose not to wait until proceeding A.04-12-004 is ruled upon by the Commission before adopting these open access tariffs. If our decision in A.04-12-004 indicates that changes in open access tariffs are warranted, we will order that those changes be made at that time. As discussed later, these open access tariffs will be suspended pending Commission approval of certain standard Agreements.

Application or Advice Letter to Implement Open Access Tariffs

SCE and SCGC argue that the open access tariffs should not be developed through an advice letter process, but rather through an application. SCE argues that an application process is needed to properly develop the standards to determine compliance and non-compliance with the open access standard. However, since D.04-09-022 did not specify that these tariffs be developed through an application, it should be quite clear to all parties that the advice letter

process is the appropriate avenue. Furthermore, we agree with SoCalGas and SDG&E (the utilities) in their response that it is sufficient for the tariff to state its commitment to nondiscrimination. Also, the measures described in the utilities' open access tariffs are clearly meant to apply equally to parties in a nondiscriminatory manner. Finally, some of the metrics which may be used to determine utility compliance to this standard are contained in this Rule, while others, such as rates and terms of service, are described elsewhere in the utility tariff. We deny SCE's requests.

SCGC's request to order the utilities to refile the open access tariff in an application is denied, for reasons discussed above. We do, however, share SCGC's concern about putting into effect tariffs which reference contract forms which have not been approved by the Commission. The resolution of this issue is discussed in a following section ("The Standardized Agreement Forms").

Request for System Maps:

Several parties have requested that the utilities submit system-wide flow diagrams when they refile their open access tariff. We will deny this request. As the utilities point out in their response, the requests lack sufficient detail as to what should be contained in the diagrams. The utilities also note that "flows can vary significantly at particular receipt points depending upon conditions", requiring individual studies for any potential interconnection, with the result that "off the shelf" flow diagrams are not feasible. Furthermore, we believe that the process for requesting capacity studies, as outlined in Section C, adequately serves the purpose of assisting potential new gas suppliers in determining the feasibility for their interconnection.

The Standardized Agreement Forms:

Several parties have contested the proposed Rule 39's reference to and integration of Interconnection and Operational Balancing Agreements (IOBAs) (in A.2), Construction Agreements (in A.3), Consulting Services Agreements (in C.3), Collectible System Upgrade Agreements (in C.3), and Confidentiality Agreements (in C.3). These parties argue that it is improper for tariffs to be in place that make reference to contractual agreements that are neither standardized nor approved by the Commission. In their response, the utilities argue that neither Commission approval nor standardization is necessary for

these agreements to be executed between parties, and thus it is proper to integrate them into the tariff language at this point.

Even though we agree with the utilities that standardized agreements are not necessary in every instance, we believe that in the interest of nondiscrimination it is best to have standardized agreements whenever possible. For this reason, we will order SoCalGas and SDG&E to propose standardized forms for the agreements mentioned above when they re-file their Rule 39 including the changes we are ordering in this Resolution, other than the IOBA. Because the IOBA is being addressed in R.04-01-025, and because the need for a standard IOBA does not appear as pressing at this time as the need for the other agreements, the utilities need not file the IOBA standardized forms in their re-filing. Once we have adopted the final version of these agreements (except for the IOBAs), the Rule 39 will be implemented. The standard IOBA, if adopted by the Commission in R.04-01-025, may be incorporated in the tariffs after the Commission reaches its decision in that proceeding.

Kern and Questar and SES have expressed concern that standardized agreement forms might be too constraining if deviations from standardized agreements are not permitted. We appreciate this concern, and yet we are also concerned that the effort to create standardized forms might become meaningless if the forms are simply understood as suggested starting points from which the interconnecting party and the utility may negotiate. It remains our intention to approve standardized forms whose structure cannot be changed, but which are flexible enough to encompass a variety of circumstances. We ask that the standardized forms which the utilities file embody this intention.

Elaboration on Nondiscrimination:

Parties have expressed concern that some of the proposed Terms of access — no.1, no.6, and no.7 — might be interpreted in such a way as to amount to discriminatory treatment. One proposal is to add language to the individual paragraphs they thought might be interpreted in a discriminatory fashion to emphasize that all sources of gas were to compete on an equal footing. SELNG has proposed adding a sentence to the introductory paragraph re-emphasizing the non-discriminatory nature of the tariffs. Indeed, as noted by the utilities in their response filing, the proposed Rule 39 already contains in its introductory paragraph language asserting the non-discriminatory nature of the open access service. However, in order to meet these concerns and make sure that open

access allows all gas sources to compete on an equal footing, and to do so in a way that economizes on verbiage, we shall order the utilities to add the following sentence to the introductory paragraph.

> "None of the provisions in this Rule 39 shall be interpreted so as to unduly discriminate against or in favor of gas supplies coming from any source."

Consistency with A.04-08-018:

SCGC raises interesting questions with respect to inconsistencies between certain features of service under this Rule 39 and the service proposed by SoCalGas in A.04-08-018. When the utilities file their proposed standardized contract forms, in compliance with this resolution, all parties will be able to comment on those forms' consistency, as well as on the need for consistency, with utility service as proposed in A.04-08-018. SCGC and other parties are free to pursue concerns beyond the standardized contract forms in that other proceeding. Since the Commission has issued no decision in A.04-08-018, we view the concern about consistency with that proceeding to be premature.

Other Modifications to Terms of Access — Section A:

Coral has objected to the second sentence of Term of access no. 2 (A.2), arguing that it is premature. We agree, and order that the second sentence be deleted.

Coral and SCGC have objected to the conditional and tentative nature of the proposed Term of access no. 4 (A.4), which establishes transportation scheduling points. The utilities in their response have expressed willingness to change the word "may" to "shall". We will order them to make this change.

Also regarding Term of access no.4 (A.4), Coral has requested that language be added that states that a customer need not amend its existing transportation agreement to take advantage of the new receipt point. We agree with the utilities, as they argue in their response, that this stipulation was not envisioned in D.04-09-022, and so we deny this request.

Coral and IP request that the entire Term of access no. 5 (paragraph A.5) be deleted, for two reasons. First, it specifies operational constraints that are more properly addressed in the IOBA, which is being addressed in Phase 2 of R.04-01-025. Second, addressing these matters in Rule 39, when some of these matters are already being handled in Section B.2 of Rule 30, implies different service

constraints for existing and for new customers, running counter to the Commission's intention of nondiscrimination. We agree, and order this paragraph deleted.

Coral's Requested New Terms of Access:

Coral has also requested the addition of three new Terms of access. First, Coral desires a statement in the tariff that, in addition to Otay Mesa, any new receipt point should be accorded status as a common receipt point for both SDG&E and SoCalGas. We see no express intention of D.04-09-022 to this effect, and so we deny this request.

Second, Coral asks that a paragraph be added to the tariff stating the utility's requirement to provide an interconnection and capacity study, upon request. While the utilities argue that this is redundant and unnecessary, we believe that in fact the proposed language is not redundant, and that it is useful and is in the interest of providing open access, and so we order it to be included as a new paragraph in the "Interconnection Capacity Studies" section. Addressing a concern raised elsewhere in Coral's protest, this language will also state that the study shall be done in a timely fashion.

Coral's third requested paragraph consists of three closely-related propositions. Coral wants the tariff to state that the utility will expand its receipt point capacity at the request and expense of a supply source or an interconnecting pipeline. The utilities do not object to this addition, and we approve it. Next, Coral wants the tariff to state that the party that pays for the expansion of capacity on the system will have scheduling priority. The utilities point out correctly that this was not authorized by D.04-09-022 and that this topic is being considered in A.04-12-004, and so we deny this request. Third, Coral requests tariff language stating that utilities must make applications for rolled-in ratemaking treatment for new supply source-related system upgrades. The utilities object, saying that this amounts to an unnecessary restriction on the discretion of the utility to determine whether rolled-in ratemaking treatment is merited.

We generally agree with the utilities. D.04-09-022 clearly adopts a policy that presumes that providers of new sources of supplies will pay the actual system infrastructure costs associated with new interconnections. However, that decision allows utilities to file applications for rolled-in treatment. In any such

applications for rolled-in ratemaking treatment, the utilities will need to clearly explain not only why a particular application for rolled-in ratemaking was made, but also why other potential applications were not made.

Gas Quality Standards — Section B:

Numerous commenters request that the section of the proposed Rule 39 dealing with gas quality — Section B — be excised on the grounds that it is premature (the gas quality technical workshop ordered in D.04-09-022 has not yet taken place), outside the scope of this compliance filing (the Gas Quality standards are addressed in Rule 30 and should continue to do so), and suggestive of discrimination (having gas quality standards enumerated in two places in the tariff implies that there is one standard for new supplies, and another for previously connected supplies). We agree. Changes in posted gas quality standards should await disposition in Phase 2 of R.04-01-025. Also, gas quality standards should continue to be addressed in Rule 30, where they now reside.

Interconnection Capacity Studies — Section C:

The clause that Coral requests be added to this section, stating that the utility will negotiate and undertake any interconnection capacity study on a non-discriminatory basis, recognizing that time is of the essence, and that parties will have to pay all actual and reasonable costs, is substantially reflected in other language in the modified Rule 39, and so is redundant and unnecessary.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, the draft resolution was mailed to parties for comments.

Five parties filed comments on March 3, 2005. SoCal and SDG&E filed joint comments. The utilities object to the deletion of Gas Quality Standards in Section B of Rule 39. For reasons explained in the Resolution, we do not agree with their contention. The utilities also object to the deletion of the second sentence of A.2 and of A.5. SoCal and SDG&E do not object to filing the ordered pro forma forms. They maintain that in its discussion on pp.60-61, D.04-09-022 approved of this very language. We find that the utilities mischaracterize D.04-09-022, which does not approve of this language.

SES objects to the failure of the draft Resolution to address certain features of paragraph A.5. Apparently SES did not notice that the Draft Resolution ordered that paragraph A.5 be deleted. SES also objects to the Draft Resolution's advocacy of a standard IOBA which does not allow deviations. We appreciate SES's concern in this matter, but maintain our position, for reasons explained in the Resolution. If the Commission decides in its investigation in R.04-01-025 to dispose of the matter differently, the tariff can be changed at that time.

SCGC supports the draft Resolution as written.

Kern River and Questar Southern Trails (Joint Pipelines) filed joint comments. Like SES, the Joint Pipelines object to paragraph A.5, apparently not noticing that the Draft Resolution ordered this paragraph to be deleted. Like SES, the Joint Pipelines also object to the Draft Resolution's language re the IOBA, and our response is the same. In addition, the Joint Pipelines complain that, notwithstanding the laudable language which the Draft Resolution ordered inserted regarding equal treatment for gas from different supplies, the Commission continues to give artificial preference to gas from the Southwest over gas from the Rockies. While we appreciate this concern, we do not consider this Resolution the appropriate place to address it.

Coral asks for a correction – instead of deferring the matter to Phase 2 of R.04-01-025, the Resolution should state that gas quality issues will be taken up through the collaborative interagency workshop process that has been initiated by this Commission, the California Energy Commission, the California Air Resources Board, and the State's Department of Conservation – Division of Oil, Gas, and

Geothermal Resources. We disagree with Coral, noting that the January 22, 2005 Scoping Memo for R.04-01-025 Phase 2 listed this topic as one of its concerns. We encourage Coral to raise its concerns regarding the timing of the disposition of the gas quality issue in Phase 2. Coral also asks for assurance that all new interconnection points should be accessible to all shippers and customers who are otherwise entitled to service under Rule 30. We reiterate our position that this matter is beyond the scope of this proceeding, and note further that this is a topic of A.04-12-004.

REPLY COMMENTS

Four parties filed comments on March 10, 2005. No new information was provided, and so no changes resulting from these were found to be necessary.

FINDINGS

1. On September 10, 2004, the Commission issued its Phase 1 decision, D.04-09-022, in the Gas Market OIR, R.04-01-025.
2. OP 6 of D.04-09-022 ordered SoCalGas, SDG&E, and PG&E to file "non-discriminatory open access tariffs for all new sources of supply, including potential liquefied natural gas (LNG) supplies." Although not explicit, the Commission's clear intent was that these filings be made via an advice letter.
3. On October 4, 2004 SoCalGas and SDG&E responded to OP 6 by filing AL 3413 and AL 1474-G, respectively, containing an identical proposal for a new tariff Rule 39 for open access. PG&E filed its open access tariff proposal as an addition to its pre-existing Rule 21.
4. On or before October 25, 2004, seven parties filed timely protests to the proposed new Rule 39. These parties were BHP Billiton, Coral Energy Resources, Indicated Producers, Peru LNG, Sempra Energy LNG, Southern California Edison, and Southern California Generation Coalition.
5. On November 1, 2004, SoCalGas and SDG&E filed a joint response to the protests. Responses to the protests were also filed by Kern River/Questar, Sound Energy Solutions, and GTN.
6. On November 10, 2004 California Independent Petroleum Association (CIPA) filed a late protest to the SoCalGas & SDG&E advice filings.

7. Because CIPA's filing was too late even for the utility to respond to it, it is reasonable that its filing be ignored.
8. It is not reasonable to wait for the end of Phase 2 of R.04-01-025 before we approve the open access tariffs.
9. It is not reasonable to wait until we reach a decision in A.04-12-004 to approve open access tariffs.
10. PG&E's proposed new Section H of Rule 21 is a reasonable nondiscriminatory open access tariff.
11. Because there was a lack of clarity in detail as to what would be included in the diagrams, and because individual interconnections require individual flow studies, it is not reasonable to require SoCalGas and SDG&E to file system flow diagrams with their open access tariff filing.
12. In the interest of equal opportunity and open access, it is best to have Commission-approved standardized agreement forms available to interconnecting parties whenever possible.
13. It is reasonable for SoCalGas and SDG&E to re-file their open access tariffs, incorporating the changes ordered in this resolution, and to include proposed agreement forms for all of the agreement types mentioned in the proposed Rule 39, except for the Interconnection and Operational Balancing Agreement (IOBA), which is being dealt with in Phase 2 of R.04-01-025.
14. When SoCalGas and SDG&E re-file their open access tariffs, it is reasonable for Rule 39 to be suspended until the Commission has ruled on or approved all of the proposed agreement forms referenced in Rule 39, except for the IOBA.
15. It is reasonable to amplify the language, in the introductory paragraph of Rule 39, mandating that all gas supply sources compete on an equal footing basis.
16. The concern about consistency with A.04-08-018, where the Commission has not issued any decision, is premature.
17. Because it prejudges the contents of the IOBA which is being developed in Phase 2 of R.04-01-025, the second sentence of Paragraph A.2 of Rule 39 as it is filed is premature.
18. In order to render the designation of an interconnection point as a transportation scheduling point less tentative, it is reasonable to change the word "may" in Paragraph A.4 of Rule 39 to "shall."
19. Coral's request for other changes in Paragraph A.4 of Rule 39 goes beyond the scope of D.04-09-022.
20. Because elements of Paragraph A.5 of Rule 39 are more appropriately dealt with in an IOBA, and because some elements of Paragraph A.5 of Rule 39 are

already handled in SoCalGas' and SDG&E's existing Rule 30, it is appropriate to delete Paragraph A.5 of Rule 39.

21. Coral's request that Rule 39 state that any new receipt point in addition to Otay Mesa be accorded status as a common receipt oint for both SDG&E and SoCalGas goes beyond the expressed intention of D.04-09-022.
22. Coral's request that the utilities add a paragraph to Rule 39 stating the utility's requirement to provide an interconnection and capacity study is reasonable. It is also reasonable that the study shall be done in timely fashion.
23. Coral's request that Rule 39 state that the utility will expand its receipt point capacity at the request and expense of a supply source or an interconnecting pipeline is reasonable.
24. Coral's request that Rule 39 state that the party that pays for the expansion of capacity on the system will have scheduling priority goes beyond the scope of D.04-09-022.
25. D.04-09-022 clearly adopts a policy that presumes that providers of new sources of supplies will pay the actual system infrastructure costs associated with new interconnections. However, that decision allows utilities to file applications for rolled-in treatment. In any such applications for rolled-in ratemaking treatment, the utilities will need to clearly explain not only why a particular application for rolled-in ratemaking was made, but also why other potential applications were not made.
26. Many parties raise reasonable objections to the inclusion of Gas Quality Standards – Section B in Rule 39. This section runs counter to the directive of D.04-09-022, which states that tariffed gas standards should not be changed, until this can be addressed in Phase 2 of R.04-01-025. By including gas standards for new supplies separately from their main location in the tariffs, i.e. in Rule 30, they imply discriminatory gas quality standards.
27. Apart from the one change noted above, no other changes to the proposed Interconnection Capacity Studies – Section C are needed.

THEREFORE IT IS ORDERED THAT:

1. The request of PG&E for approval of Section H of its Rule 21 containing open access tariffs is approved without modifications.
2. The request of SoCalGas and SDG&E to seek approval of a new Rule 39 containing open access tariffs is approved with modifications.

3. Rule 39 language mandating that all gas supply sources compete on an equal footing basis shall be amplified as noted herein.
4. The second sentence of Paragraph A.2 shall be deleted.
5. In Paragraph A.4 of Rule 39, the word "may" shall be replaced with the word "shall".
6. Paragraph A.5 of Rule 39 shall be deleted.
7. A new paragraph shall be added to Capacity Studies – Section C of Rule 39 stating the utility's requirement to provide an interconnection and capacity study in a timely fashion.
8. A new paragraph shall be added to Rule 39 stating that the utility will expand its receipt point capacity at the request and expense of a supply source or an interconnecting pipeline.
9. Gas Quality Standards – Section B of the proposed Rule 39 shall be deleted.
10. Within 15 days of the day of this order, SoCalGas and SDG&E shall re-file the open access tariffs in a supplemental advice letter, containing the changes indicated in this resolution.
11. With the re-filed Rule 39, SoCalGas and SDG&E shall include proposed new standardized agreement forms for all of the agreement types referenced in the Rule 39, except for the IOBA.
12. Parties will have the opportunity to protest the proposed new standardized agreement forms.
13. The SoCalGas and SDG&E open access tariffs will be suspended until the agreement forms referenced in Rule 39, excluding the IOBA, which is being dealt with in R.04-01-025, have been approved by the Commission.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 17, 2005; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director